

Introduced by Senator KuehlJanuary 27, 2004

An act to amend Section 707 of the Welfare and Institutions Code, relating to juvenile crime.

LEGISLATIVE COUNSEL'S DIGEST

SB 1151, as introduced, Kuehl. Juvenile crime.

Existing law provides that the commission of specified offenses by a minor 14 years of age or older raises a presumption that the minor is not a fit and proper subject to be dealt with juvenile court law, unless the juvenile court concludes that the minor would be amenable to juvenile court treatment based upon evaluation of specified criteria. One of the criteria listed is the circumstances and gravity of the offenses.

This bill would specify that the criterion for evaluating the circumstances and gravity of the offense includes the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter which may affect the circumstances and gravity of the offenses.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 707 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 707. (a) (1) In any case in which a minor is alleged to be a
- 4 person described in Section 602 (a) by reason of the violation,
- 5 when he or she was 16 years of age or older, of any criminal statute
- 6 or ordinance except those listed in subdivision (b), upon motion of



1 the petitioner made prior to the attachment of jeopardy the court
2 shall cause the probation officer to investigate and submit a report
3 on the behavioral patterns and social history of the minor being
4 considered for a determination of unfitness. Following submission
5 and consideration of the report, and of any other relevant evidence
6 which the petitioner or the minor may wish to submit, the juvenile
7 court may find that the minor is not a fit and proper subject to be
8 dealt with under the juvenile court law if it concludes that the
9 minor would not be amenable to the care, treatment, and training
10 program available through the facilities of the juvenile court,
11 based upon an evaluation of the following criteria:

12 (1) The degree of criminal sophistication exhibited by the
13 minor.

14 (2) Whether the minor can be rehabilitated prior to the
15 expiration of the juvenile court's jurisdiction.

16 (3) The minor's previous delinquent history.

17 (4) Success of previous attempts by the juvenile court to
18 rehabilitate the minor.

19 (5) The circumstances and gravity of the offense alleged in the
20 petition to have been committed by the minor.

21 A determination that the minor is not a fit and proper subject to
22 be dealt with under the juvenile court law may be based on any one
23 or a combination of the factors set forth above, which shall be
24 recited in the order of unfitness. In any case in which a hearing has
25 been noticed pursuant to this section, the court shall postpone the
26 taking of a plea to the petition until the conclusion of the fitness
27 hearing, and no plea which may already have been entered shall
28 constitute evidence at the hearing.

29 (2) This paragraph shall apply to a minor alleged to be a person
30 described in Section 602 by reason of the violation, when he or she
31 has attained the age of 16 years, of any felony offense when the
32 minor has been declared to be a ward of the court pursuant to
33 Section 602 on one or more prior occasions if both of the following
34 apply:

35 (A) The minor has previously been found to have committed
36 two or more felony offenses.

37 (B) The offenses upon which the prior petition or petitions
38 were based were committed when the minor had attained the age
39 of 14 years.



1 Upon motion of the petitioner made prior to the attachment of
2 jeopardy the court shall cause the probation officer to investigate
3 and submit a report on the behavioral patterns and social history
4 of the minor being considered for a determination of unfitness.
5 Following submission and consideration of the report, and of any
6 other relevant evidence that the petitioner or the minor may wish
7 to submit, the minor shall be presumed to be not a fit and proper
8 subject to be dealt with under the juvenile court law unless the
9 juvenile court concludes, based upon evidence, which evidence
10 may be of extenuating or mitigating circumstances that the minor
11 would be amenable to the care, treatment, and training program
12 available through the facilities of the juvenile court, based upon an
13 evaluation of the following criteria:

14 (A) The degree of criminal sophistication exhibited by the
15 minor.

16 (B) Whether the minor can be rehabilitated prior to the
17 expiration of the juvenile court's jurisdiction.

18 (C) The minor's previous delinquent history.

19 (D) Success of previous attempts by the juvenile court to
20 rehabilitate the minor.

21 (E) The circumstances and gravity of the offense alleged in the
22 petition to have been committed by the minor.

23 A determination that the minor is a fit and proper subject to be
24 dealt with under the juvenile court law shall be based on a finding
25 of amenability after consideration of the criteria set forth above,
26 and findings therefor recited in the order as to each of the above
27 criteria that the minor is fit and proper under each and every one
28 of the above criteria. In making a finding of fitness, the court may
29 consider extenuating and mitigating circumstances in evaluating
30 each of the above criteria. In any case in which the hearing has been
31 noticed pursuant to this section, the court shall postpone the taking
32 of a plea to the petition until the conclusion of the fitness hearing
33 and no plea which may already have been entered shall constitute
34 evidence at the hearing. If the minor is found to be a fit and proper
35 subject to be dealt with under the juvenile court law pursuant to this
36 subdivision, the minor shall be committed to placement in a
37 juvenile hall, ranch camp, forestry camp, boot camp, or secure
38 juvenile home pursuant to Section 730, or in any institution
39 operated by the Youth Authority.

(3) If, pursuant to this subdivision, the minor is found to be not a fit and proper subject for juvenile court treatment and is tried in a court of criminal jurisdiction and found guilty by the trier of fact, the judge may commit the minor to the Youth Authority in lieu of sentencing the minor to the state prison, unless the limitations specified in Section 1732.6 apply.

(b) Subdivision (c) shall be applicable in any case in which a minor is alleged to be a person described in Section 602 by reason of the violation, when he or she was 16 years of age or older, of one of the following offenses:

(1) Murder.

(2) Arson, as provided in subdivision (a) or (b) of Section 451 of the Penal Code.

(3) Robbery.

(4) Rape with force or violence or threat of great bodily harm.

(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.

(6) Lewd or lascivious act as provided in subdivision (b) of Section 288 of the Penal Code.

(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.

(8) Any offense specified in subdivision (a) of Section 289 of the Penal Code.

(9) Kidnapping for ransom.

(10) Kidnapping for purpose of robbery.

(11) Kidnapping with bodily harm.

(12) Attempted murder.

(13) Assault with a firearm or destructive device.

(14) Assault by any means of force likely to produce great bodily injury.

(15) Discharge of a firearm into an inhabited or occupied building.

(16) Any offense described in Section 1203.09 of the Penal Code.

(17) Any offense described in Section 12022.5 or 12022.53 of the Penal Code.

(18) Any felony offense in which the minor personally used a weapon listed in subdivision (a) of Section 12020 of the Penal Code.

1 (19) Any felony offense described in Section 136.1 or 137 of
2 the Penal Code.

3 (20) Manufacturing, compounding, or selling one-half ounce
4 or more of any salt or solution of a controlled substance specified
5 in subdivision (e) of Section 11055 of the Health and Safety Code.

6 (21) Any violent felony, as defined in subdivision (c) of
7 Section 667.5 of the Penal Code, which would also constitute a
8 felony violation of subdivision (b) of Section 186.22 of the Penal
9 Code.

10 (22) Escape, by the use of force or violence, from any county
11 juvenile hall, home, ranch, camp, or forestry camp in violation of
12 subdivision (b) of Section 871 where great bodily injury is
13 intentionally inflicted upon an employee of the juvenile facility
14 during the commission of the escape.

15 (23) Torture as described in Sections 206 and 206.1 of the Penal
16 Code.

17 (24) Aggravated mayhem, as described in Section 205 of the
18 Penal Code.

19 (25) Carjacking, as described in Section 215 of the Penal Code,
20 while armed with a dangerous or deadly weapon.

21 (26) Kidnapping, as punishable in subdivision (d) of Section
22 208 of the Penal Code.

23 (27) Kidnapping, as punishable in Section 209.5 of the Penal
24 Code.

25 (28) The offense described in subdivision (c) of Section 12034
26 of the Penal Code.

27 (29) The offense described in Section 12308 of the Penal Code.

28 (30) Voluntary manslaughter, as described in subdivision (a) of
29 Section 192 of the Penal Code.

30 (c) With regard to a minor alleged to be a person described in
31 Section 602 by reason of the violation, when he or she was 14 years
32 of age or older, of any of the offenses listed in subdivision (b), upon
33 motion of the petitioner made prior to the attachment of jeopardy
34 the court shall cause the probation officer to investigate and submit
35 a report on the behavioral patterns and social history of the minor
36 being considered for a determination of unfitness. Following
37 submission and consideration of the report, and of any other
38 relevant evidence which the petitioner or the minor may wish to
39 submit the minor shall be presumed to be not a fit and proper
40 subject to be dealt with under the juvenile court law unless the

1 juvenile court concludes, based upon evidence, which evidence
2 may be of extenuating or mitigating circumstances, that the minor
3 would be amenable to the care, treatment, and training program
4 available through the facilities of the juvenile court based upon an
5 evaluation of each of the following criteria:

6 (1) The degree of criminal sophistication exhibited by the
7 minor.

8 (2) Whether the minor can be rehabilitated prior to the
9 expiration of the juvenile court's jurisdiction.

10 (3) The minor's previous delinquent history.

11 (4) Success of previous attempts by the juvenile court to
12 rehabilitate the minor.

13 (5) The circumstances and gravity of the offenses alleged in the
14 petition to have been committed by the minor. *This includes the*
15 *actual alleged behavior of the minor, the minor's degree of*
16 *involvement in the crime, the level of harm actually caused by the*
17 *minor, and any other matter which may affect the circumstances*
18 *and gravity of the offenses.*

19 A determination that the minor is a fit and proper subject to be
20 dealt with under the juvenile court law shall be based on a finding
21 of amenability after consideration of the criteria set forth above,
22 and findings therefor recited in the order as to each of the above
23 criteria that the minor is fit and proper under each and every one
24 of the above criteria. In making a finding of fitness, the court may
25 consider extenuating or mitigating circumstances in evaluating
26 each of the above criteria. In any case in which a hearing has been
27 noticed pursuant to this section, the court shall postpone the taking
28 of a plea to the petition until the conclusion of the fitness hearing
29 and no plea which may already have been entered shall constitute
30 evidence at the hearing. If, pursuant to this subdivision, the minor
31 is found to be not a fit and proper subject for juvenile court
32 treatment and is tried in a court of criminal jurisdiction and found
33 guilty by the trier of fact, the judge may commit the minor to the
34 Youth Authority in lieu of sentencing the minor to the state prison,
35 unless the limitations specified in Section 1732.6 apply.

36 (d) (1) Except as provided in subdivision (b) of Section 602,
37 the district attorney or other appropriate prosecuting officer may
38 file an accusatory pleading in a court of criminal jurisdiction
39 against any minor 16 years of age or older who is accused of
40 committing an offense enumerated in subdivision (b).

(2) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading against a minor 14 years of age or older in a court of criminal jurisdiction in any case in which any one or more of the following circumstances apply:

(A) The minor is alleged to have committed an offense which if committed by an adult would be punishable by death or imprisonment in the state prison for life.

(B) The minor is alleged to have personally used a firearm during the commission or attempted commission of a felony, as described in Section 12022.5 of the Penal Code.

(C) The minor is alleged to have committed an offense listed in subdivision (b) in which any one or more of the following circumstances apply:

(i) The minor has previously been found to be a person described in Section 602 by reason of the commission of an offense listed in subdivision (b).

(ii) The offense was committed for the benefit of, at the direction of, or in association with any criminal street gang, as defined in subdivision (f) of Section 186.22 of the Penal Code, with the specific intent to promote, further, or assist in any criminal conduct by gang members.

(iii) The offense was committed for the purpose of intimidating or interfering with any other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States and because of the other person's race, color, religion, ancestry, national origin, disability, gender, or sexual orientation, or because the minor perceives that the other person has one or more of those characteristics, as described in Title 11.6 (commencing with Section 422.6) of Part 1 of the Penal Code.

(iv) The victim of the offense was 65 years of age or older, or blind, deaf, quadriplegic, paraplegic, developmentally disabled, or confined to a wheelchair, and that disability was known or reasonably should have been known to the minor at the time of the commission of the offense.

(3) Except as provided in subdivision (b) of Section 602, the district attorney or other appropriate prosecuting officer may file an accusatory pleading in a court of criminal jurisdiction against any minor 16 years of age or older who is accused of committing

1 one of the following offenses, if the minor has previously been
2 found to be a person described in Section 602 by reason of the
3 violation of any felony offense, when he or she was 14 years of age
4 or older:

5 (A) Any felony offense in which it is alleged that the victim of
6 the offense was 65 years of age or older, or blind, deaf,
7 quadriplegic, paraplegic, developmentally disabled, or confined
8 to a wheelchair, and that disability was known or reasonably
9 should have been known to the minor at the time of the commission
10 of the offense;

11 (B) Any felony offense committed for the purposes of
12 intimidating or interfering with any other person's free exercise or
13 enjoyment of any right secured to him or her by the Constitution
14 or laws of this state or by the Constitution or laws of the United
15 States and because of the other person's race, color, religion,
16 ancestry, national origin, disability, gender, or sexual orientation,
17 or because the minor perceived that the other person had one or
18 more of those characteristics, as described in Title 11.6
19 (commencing with Section 422.6) of Part 1 of the Penal Code; or

20 (C) The offense was committed for the benefit of, at the
21 direction of, or in association with any criminal street gang as
22 prohibited by Section 186.22 of the Penal Code.

23 (4) In any case in which the district attorney or other
24 appropriate prosecuting officer has filed an accusatory pleading
25 against a minor in a court of criminal jurisdiction pursuant to the
26 provisions of this subdivision, the case shall then proceed
27 according to the laws applicable to a criminal case. In conjunction
28 with the preliminary hearing as provided for in Section 738 of the
29 Penal Code, the magistrate shall make a finding that reasonable
30 cause exists to believe that the minor comes within the provisions
31 of this subdivision. If reasonable cause is not established, the
32 criminal court shall transfer the case to the juvenile court having
33 jurisdiction over the matter.

34 (5) For any offense for which the prosecutor may file the
35 accusatory pleading in a court of criminal jurisdiction pursuant to
36 this subdivision, but elects instead to file a petition in the juvenile
37 court, if the minor is subsequently found to be a person described
38 in subdivision (a) of Section 602, the minor shall be committed to
39 placement in a juvenile hall, ranch camp, forestry camp, boot



1 camp, or secure juvenile home pursuant to Section 730, or in any
2 institution operated by the Youth Authority.

3 (6) If, pursuant to this subdivision, the minor is found to be not
4 a fit and proper subject for juvenile court treatment and is tried in
5 a court of criminal jurisdiction and found guilty by the trier of fact,
6 the judge may commit the minor to the Youth Authority in lieu of
7 sentencing the minor to the state prison, unless the limitations
8 specified in Section 1732.6 apply.

9 (e) Any report submitted by a probation officer pursuant to this
10 section regarding the behavioral patterns and social history of the
11 minor being considered for a determination of unfitness shall
12 include any written or oral statement offered by the victim, the
13 victim's parent or guardian if the victim is a minor, or if the victim
14 has died, the victim's next of kin, as authorized by subdivision (b)
15 of Section 656.2. Victims' statements shall be considered by the
16 court to the extent they are relevant to the court's determination of
17 unfitness.

